



ALAN WILSON
ATTORNEY GENERAL

March 31, 2021

Director Lewis J. Swindler, Jr.
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, SC 29212-3540

Dear Director Swindler:

Thank you for your letter of March 18, 2021 regarding Class 3 Special Law Enforcement Officers carrying firearms while on duty. You ask us to opine on “whether Class 3 officers have the authority to carry firearms while on duty,” and if so, “whether the Law Enforcement Training Council (LETC) has the authority to restrict their ability to carry a firearm while on duty.”

We respectfully must avoid the issuance of a formal opinion in response to your request pursuant to our long-standing policy of deference to the reasonable statutory construction of an administrative agency. “Generally, the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Op. S.C. Att’y Gen., 2004 WL 736929 (March 23, 2004) (citing Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987); Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976)). In such cases, “it is not necessary that the administrative agency’s construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding.” Id. Thus, like a court, this Office will typically avoid intruding into the ongoing administrative process of the agency charged with enforcement of particular statutes – such as those the Academy and Training Council enforce on a day-to-day basis.

This deference especially applies here because the various classes of law enforcement certification exist only by virtue of LETC regulations. While certain statutes of the General Assembly refer to, e.g., Class 3 law enforcement officers, it appears that it is regulation 37-005 that creates the distinction between a Class 3 certification and a Class 1. See S.C. Code Ann. Reg. § 37-005 (Supp. 2020). Where there is a question about the limits of a Class 3 certification compared to a Class 1, the LETC and the CJA are uniquely positioned to define the limits of their own creation.

In fact, we learned that the LETC is in the process of weighing how to address the use and activities of Class 3 SLEOs through an exercise of the Council's authority pursuant to section 23-23-80 of the South Carolina Code. Subsections 5 and 6 of that statute authorize the Council to:

- (5) make such regulations as may be necessary for the administration of this chapter, including the issuance of orders directing public law enforcement agencies to comply with this chapter and all regulations so promulgated;
- (6) certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the council.

S.C. Code Ann. § 23-23-80(5) & (6) (Supp. 2020). We also learned that the LETC is at the deliberative stage, and has not yet issued any binding regulation or order that a court could assess for reasonableness. Moreover, we have come to understand that there are differences of opinion between the various members of the Council, and no opinion of this Office should be allowed to usurp or stifle the ongoing deliberative process.

Under these circumstances, it would not be appropriate for us to issue an opinion on the questions you present, particularly in light of the fact that the Academy and the Training Council currently have these very issues under review. Should the agency construe these statutes and issue administrative guidance or regulations, a court, as well as this Office, mindful of deference to the agency charged with enforcing the pertinent statutes, would undoubtedly defer to the agency's interpretation. So long as the construction is reasonable, that construction will stand.

In order to be as responsive as possible to your questions, we have included for your convenience certain prior opinions of this Office that appear to be relevant. Our Office has opined in the past on whether certain positions held by Class 3-certified persons qualified them as a "regular, salaried law enforcement officer" for purposes of section 16-23-20. One example is that of a deputy coroner who maintained their Class 3 certification. Op. S.C. Att'y Gen., 2012 WL 1385562 (April 12, 2012). These prior opinions have not set out a broad rule that controls the questions presented here, and the results have not been completely consistent over the decades.

However, our Office generally has answered these questions based on the authority given to the position of the individual holding a Class 3 certification. See citations infra. The South

Carolina Code does not expressly define “regular, salaried law enforcement officers” for purpose of section 16-23-20. Accordingly, our Office often has looked to the definition in section 23-23-10(1), which defines “law enforcement officer” as

an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

S.C. Code Ann. § 23-23-10(1) (Supp. 2020). Thus, in our prior opinions, the controlling question generally has not been the presence of a Class 3 certification per-se, but whether the position itself enforces some portion of the law with some power of arrest. See Op. S.C. Att’y Gen., 2012 WL 1561867 (April 19, 2012) (“The authority to arrest seems to be the linchpin requirement in determining who is considered, in a general sense, a law enforcement officer.”).

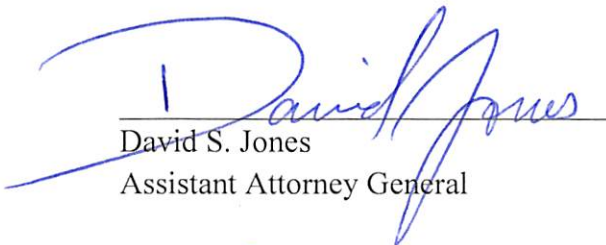
We have learned that Class 3 officers are being used in a wide variety of roles throughout the State, from Sheriff’s deputies (who clearly have the power to enforce the law and arrest) to lab technicians (who do not have the same power). Our prior opinions do not speak to every role in this spectrum. For your reference, however, we have enclosed the following prior opinions with this letter:

- An opinion discussing the definition of a “regular, salaried law enforcement officer” for purposes of section 16-23-20. Op. S.C. Att’y Gen., 1997 WL 255969 (April 24, 1997).
- An opinion concluding that a Class 3 SLEO holds an office for purposes of the dual office holding prohibition in the South Carolina Constitution, in part because such officers “possess some, albeit limited, powers of arrest.” Op. S.C. Att’y Gen., 2012 WL 4836949 (October 2, 2012).
- An opinion discussing whether a bailiff who is also a Class 3 SLEO could sign a UTT on behalf of a police department. Op. S.C. Att’y Gen., 2012 WL 1561867 (April 19, 2012).
- An opinion discussing whether a Class 3 officer has full police custodial powers. Op. S.C. Att’y Gen., 2009 WL 1649232 (May 6, 2009).
- An opinion discussing whether a deputy coroner who also was certified as a Class 3 officer could carry a firearm. Op. S.C. Att’y Gen., 2012 WL 1385562 (April 12, 2012).

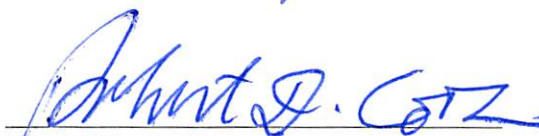
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We reiterate that no opinion of this Office should be allowed to usurp or stifle the ongoing deliberative, rule-making process of the Law Enforcement Training Council. We have included our summary and these priors only as an aid to the Council in their ongoing efforts.

Sincerely,



David S. Jones
Assistant Attorney General



Robert D. Cook
Solicitor General

Enclosures